DEPARTMENT OF STATE

THE LEGAL ADVISER

DEPARTMENT OF STATE A/CDC/MR
REVIEWED BY [illegible] DATE 3/19/82
EO ☐ ... May 26, 1953
RELEASE DENIED ☐
FOIA or PA EXEMPTIONS

TO : Mr. Phleger

FROM : Mr. Bevans G.I.B.

SUBJECT: Treaty of friendship, commerce and navigation with Japan

L/T and L/E met on May 25 with representatives of CP (Mr. Setser and Mr. Walker), NA (Mr. Hemmendinger and Mr. Fraleigh), and H (Mr. Brown) to determine their views with respect to excepting from the professions provisions of the Japanese treaty the practice of law, such exception to be accomplished by means of an exchange of notes, signature of a protocol, or signature of a new treaty, prior to submission of the treaty to the Senate for advice and consent to ratification. It was indicated to those present that submission of the treaty in its present form may result in severe criticism and reservations by the Senate with consequent embarrassment to the Japanese and a reaction against United States nationals engaged in the professions in Japan.

It was the general consensus of opinion of the policy officers that:

1. Provided the Senate leaders approved of such a course of action, the treaty should be submitted in its present form to the Senate for advice and consent to ratification.

2. H should arrange consultations with appropriate Senate leaders prior to the submission of the treaty, for the purpose of having representatives of E, and possibly also NA, present the Department's reasons for desiring to submit the treaty in its present terms and obtaining the view of the Senate leaders.

3. There would be no objection to inclusion in the report from the Secretary to the President of a special reference to the professions provisions of the treaty.

CP particularly urged that the treaty be submitted to the Senate in its present form. H favored submission of the treaty to the Senate. NA acquiesced.

The following reasons were given for the position taken:

1. The Department is not in a position to determine what amendments should be proposed as it is not known, and will not

be known

be known until the Senate acts formally, what amendments if any are to be made. The Senate may except the profession of law only or it may wish to eliminate national treatment for professions generally [conceivably, though unlikely, it might approve the treaty in its present form]. In this connection it was brought out that objection to the professions clause seemed to be confined to the legal profession. The American Institute of Accountants favors the professions clause and the medical profession has not opposed the professions clause.

2. From a diplomatic standpoint submission of the treaty in its present form would be preferable in regard to our relations not only with Japan but also with Israel. If the Department attempts to undertake negotiations with Japan for the elimination of the professions provisions without submission of the treaty to the Senate, it will appear that Japan has been singled out for discriminatory treatment in view of the inclusion of similar provisions in other treaties which have received Senate approval and inclusion of identical provisions in the treaty with Israel, presently pending before the Senate. Similarly, if the Israeli treaty is to be the only treaty to bear the brunt of the Senate refusal to accept the professions clause, such action by the Senate would give the appearance of being directed against one country. On the other hand, if both treaties are before the Senate, reservations to both treaties would clearly represent a new general policy.

3. If we approach the Japanese Government before Senate action, the result may be the reopening of negotiations, and we may lose some of the concessions which we have obtained.

4. The Senate should participate in the establishment of a national policy in this matter.

A subsidiary question was raised as to whether it might be possible, should it be determined to eliminate the professions clause, to provide that the attorneys who are presently practicing law in Japan shall be permitted to continue their practice. Mr. Setser indicated that such a proposal would place us in a worse position with respect to obtaining such concessions than if the question were not raised. Mr. Hemmendinger indicated that only one of the 30 American attorneys in Japan was admitted to practice before Japanese courts, since he was the only one who could pass the examinations. He didn't know the exact status of the other 29 - they are licensed to do something, but are not admitted to practice before the courts.